

REFERENCE TITLE: office of behavioral health licensure

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

## **HB 2227**

Introduced by  
Representative Ableser

AN ACT

AMENDING SECTION 32-3281, ARIZONA REVISED STATUTES; RELATING TO THE OFFICE OF BEHAVIORAL HEALTH LICENSURE IN THE DEPARTMENT OF HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 32-3281, Arizona Revised Statutes, is amended to  
3 read:

4           32-3281. Disciplinary action: hearings: civil penalty

5       A. A credentialing committee, on its own motion or on a complaint, may  
6 investigate any evidence that appears to show that a licensee is or may be  
7 incompetent, is or may be guilty of unprofessional conduct or is or may be  
8 mentally or physically unable to safely engage in the practice of behavioral  
9 health. As part of its investigation, a credentialing committee may hold an  
10 investigational meeting pursuant to this chapter. Any person may, and a  
11 licensee ~~and any entity licensed by the office of behavioral health licensure~~  
12 shall, report to the board any information that would cause a reasonable  
13 licensee to believe that another licensee is guilty of unprofessional conduct  
14 or is physically or mentally unable to provide behavioral health services  
15 competently or safely. Any person or entity that reports or provides  
16 information to the board in good faith is not subject to an action for civil  
17 damages. It is an act of unprofessional conduct for any licensee to fail to  
18 report as required by this section. ~~The board shall report to the office of~~  
19 ~~behavioral health licensure in the department of health services any entity~~  
20 ~~licensed by the office of behavioral health licensure that fails to report as~~  
21 ~~required by this section.~~

22       B. A credentialing committee shall require any combination of mental,  
23 physical or oral or written competency examinations, at the licensee's own  
24 expense, and conduct necessary investigations, including investigational  
25 interviews between representatives of the board and the licensee, to fully  
26 inform itself with respect to any information filed with the board under  
27 subsection A of this section. These examinations may include biological  
28 fluid testing. The credentialing committee may require the licensee, at the  
29 licensee's expense, to undergo assessment by a rehabilitative, retraining or  
30 assessment program approved by the credentialing committee.

31       C. If the board finds, based on the information received pursuant to  
32 subsection A or B of this section, that the public health, safety or welfare  
33 imperatively requires emergency action, and incorporates a finding to that  
34 effect in its order, the board may restrict, limit or order a summary  
35 suspension of a license pending proceedings for revocation or other action.  
36 If the board takes action pursuant to this subsection, it must also serve the  
37 licensee with a written notice that states the charges and that the licensee  
38 is entitled to a formal hearing before the board or an administrative law  
39 judge within sixty days.

40       D. If after completing an investigational meeting the credentialing  
41 committee finds that the information provided is not of sufficient  
42 seriousness to merit disciplinary action against the licensee, the  
43 credentialing committee shall either:

44           1. Dismiss the complaint if, in the opinion of the credentialing  
45 committee, the complaint is without merit.

1       2. Recommend any of the following actions to the board:

2           (a) Dismiss if, in the opinion of the credentialing committee, the  
3 complaint is without merit.

4           (b) File a letter of concern and dismiss the complaint.

5           (c) Issue a nondisciplinary order requiring the licensee to complete a  
6 prescribed number of hours of continuing education in an area or areas  
7 prescribed by the board to provide the licensee with the necessary  
8 understanding of current developments, skills, procedures or treatment.

9       E. A complaint dismissed by the credentialing committee pursuant to  
10 subsection D, paragraph 1 of this section is not a complaint of  
11 unprofessional conduct and shall not be disclosed by the board as a complaint  
12 on the licensee's complaint history.

13       F. If after completing its investigation the credentialing committee  
14 believes that the information is or may be true, the credentialing committee  
15 may recommend that the board enter into a consent agreement with the licensee  
16 to limit or restrict the licensee's practice or to rehabilitate the licensee,  
17 protect the public and ensure the licensee's ability to safely engage in the  
18 practice of behavioral health. A consent agreement may also require the  
19 licensee to successfully complete a board approved rehabilitative, retraining  
20 or assessment program.

21       G. If on receipt of a credentialing committee's recommendation the  
22 board finds that the information provided pursuant to subsection A of this  
23 section is not of sufficient seriousness to merit direct action against the  
24 licensee, the board may take any of the following actions:

25           1. Dismiss if, in the opinion of the board, the complaint is without  
26 merit.

27           2. File a letter of concern and dismiss the complaint. The licensee  
28 may file a written response with the board within thirty days after the  
29 licensee receives the letter of concern.

30           3. Issue a nondisciplinary order requiring the licensee to complete a  
31 prescribed number of hours of continuing education in an area or areas  
32 prescribed by the board to provide the licensee with the necessary  
33 understanding of current developments, skills, procedures or treatment.

34       H. If on receipt of a credentialing committee's recommendation the  
35 board finds that the information provided pursuant to subsection A of this  
36 section is or may be true, the board may enter into an agreement with the  
37 licensee to limit or restrict the licensee's practice or to rehabilitate the  
38 licensee, protect the public and ensure the licensee's ability to safely  
39 engage in the practice of behavioral health. The board may also require the  
40 licensee to successfully complete a board approved rehabilitative, retraining  
41 or assessment program.

42       I. If on receipt of a credentialing committee's recommendation the  
43 board finds that the information provided pursuant to subsection A of this  
44 section is or may be true, the board may request a formal interview with the  
45 licensee. If the licensee refuses the invitation for a formal interview or

1 accepts and the results indicate that grounds may exist for revocation or  
2 suspension of the licensee's license for more than twelve months, the board  
3 shall issue a formal complaint and order that a hearing be held pursuant to  
4 title 41, chapter 6, article 10. If after completing a formal interview the  
5 board finds that the protection of the public requires emergency action, the  
6 board may order a summary suspension of the licensee's license pending formal  
7 revocation proceedings or other action authorized by this section.

8 J. If after completing the formal interview the board finds the  
9 information provided is not of sufficient seriousness to merit suspension for  
10 more than twelve months or revocation of the license, the board may take the  
11 following actions:

12 1. Dismiss if, in the opinion of the board, the information is without  
13 merit.

14 2. File a letter of concern and dismiss the complaint. The licensee  
15 may file a written response with the board within thirty days after the  
16 licensee receives the letter of concern.

17 3. Issue a decree of censure. A decree of censure is an official  
18 action against the licensee's license and may include a requirement for  
19 restitution of fees to a client resulting from violations of this chapter or  
20 rules adopted pursuant to this chapter.

21 4. Fix a period and terms of probation best adapted to protect the  
22 public health and safety and rehabilitate or educate the licensee concerned.  
23 Probation may include temporary suspension not to exceed twelve months,  
24 restriction of the licensee's license to practice behavioral health, a  
25 requirement for restitution of fees to a client or education or  
26 rehabilitation at the licensee's own expense. If a licensee fails to comply  
27 with the terms of probation, the board shall serve the licensee with a  
28 written notice that states that the licensee is subject to a formal hearing  
29 based on the information considered by the board at the formal interview and  
30 any other acts or conduct alleged to be in violation of this chapter or rules  
31 adopted by the board pursuant to this chapter, including noncompliance with  
32 the terms of probation or a consent agreement.

33 5. Issue a nondisciplinary order requiring the licensee to complete a  
34 prescribed number of hours of continuing education in an area or areas  
35 prescribed by the board to provide the licensee with the necessary  
36 understanding of current developments, skills, procedures or treatment.

37 K. If the board finds that the information provided in subsection A or  
38 I of this section warrants suspension or revocation of a license issued under  
39 this chapter, the board shall initiate formal proceedings pursuant to title  
40 41, chapter 6, article 10.

41 L. In a formal interview pursuant to subsection I of this section or  
42 in a hearing pursuant to subsection K of this section, the board in addition  
43 to any other action may impose a civil penalty not to exceed one thousand  
44 dollars for each violation of this chapter or a rule adopted under this  
45 chapter.

1           M. A letter of concern is a public document.

2           N. A licensee who after a formal hearing is found by the board to be  
3 guilty of unprofessional conduct, to be mentally or physically unable to  
4 safely engage in the practice of behavioral health or to be professionally  
5 incompetent is subject to censure, probation as provided in this section,  
6 suspension of license or revocation of license or any combination of these,  
7 including a stay of action, and for a period of time or permanently and under  
8 conditions as the board deems appropriate for the protection of the public  
9 health and safety and just in the circumstance. The board may charge all  
10 costs incurred in the course of the investigation and formal hearing to the  
11 licensee it finds is in violation of this chapter. The board shall deposit,  
12 pursuant to sections 35-146 and 35-147, monies collected pursuant to this  
13 subsection in the board of behavioral health examiners fund established by  
14 section 32-3254.

15          O. If the board during the course of any investigation determines that  
16 a criminal violation may have occurred involving the delivery of behavioral  
17 health services, the board shall make the evidence of violations available to  
18 the appropriate criminal justice agency for its consideration.

19          P. The board shall deposit, pursuant to sections 35-146 and 35-147,  
20 all monies collected from civil penalties paid pursuant to this chapter in  
21 the state general fund.

22          Q. Notice of a complaint and hearing is effective by a true copy of  
23 the notice being sent by certified mail to the licensee's last known address  
24 of record in the board's files. Notice of the complaint and hearing is  
25 complete on the date of its deposit in the mail.

26          R. In determining the appropriate disciplinary action under this  
27 section, the board shall consider all previous nondisciplinary and  
28 disciplinary actions against a licensee.

29          S. The board may defer action with regard to an impaired licensee who  
30 voluntarily signs an agreement, in a form satisfactory to the board, agreeing  
31 to practice restrictions and treatment and monitoring programs deemed  
32 necessary by the board to protect the public health and safety. A licensee  
33 who is impaired and who does not agree to enter into an agreement with the  
34 board is subject to other action as provided pursuant to this chapter.

35          T. Subject to an order duly entered by the board, a person whose  
36 license to practice behavioral health has been suspended or restricted  
37 pursuant to this chapter, whether voluntarily or by action of the board, may  
38 at reasonable intervals apply to the board for reinstatement of the license.  
39 The person shall submit the application in writing and in the form prescribed  
40 by the board. After conducting an investigation and hearing, the board may  
41 grant or deny the application or modify the original finding to reflect any  
42 circumstances that have changed sufficiently to warrant modification. The  
43 board may require the applicant to pass an examination or complete board  
44 imposed continuing education requirements or may impose any other sanctions

1 the board deems appropriate for reentry into the practice of behavioral  
2 health.

3 U. A person whose license is revoked, suspended or not renewed must  
4 return the license to the offices of the board within ten days after notice  
5 of that action.

6 V. The board may enforce a civil penalty imposed pursuant to this  
7 section in the superior court in Maricopa county.

8 W. For complaints being brought before a credentialing committee or  
9 the full board, the information released to the public regarding an ongoing  
10 investigation must clearly indicate that the investigation is a pending  
11 complaint and must include the following statement:

12 Pending complaints represent unproven allegations. On  
13 investigation, many complaints are found to be without merit or  
14 not of sufficient seriousness to merit disciplinary action  
15 against the licensee and are dismissed.

16 Sec. 2. Department of health services; office of behavioral  
17 health licensing

18 A. Beginning on the effective date of this act, the division of  
19 licensing services in the department of health services shall cease the  
20 operations of the office of behavioral health licensure and any activities  
21 conducted by that office shall not be assumed by any other agency or division  
22 in the department.

23 B. If a facility has submitted a licensure fee before the effective  
24 date of this act, the department shall return the portion of that fee for the  
25 remainder of the licensure period, as prorated by month.